

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

**NIBCO INC., IN ITS CAPACITY AS THE
SPONSOR AND ADMINISTRATOR OF
THE NIBCO INC. PROFIT SHARING AND
401(K) SAVINGS PLAN,**

Plaintiff,

v.

**AMERICAN FUNDS SERVICE
COMPANY, and THE GROWTH FUND OF
AMERICA, INC.,**

Defendants.

CASE NO. 1:09-cv-0319 WTL-TAB

MOTION TO WITHDRAW AND SEAL DEFENDANTS' STATUS REPORT [DKT. 37]

Defendants, American Funds Service Company and The Growth Fund of America, Inc. (collectively, "Defendants"), by counsel, pursuant to S.D.Ind.L.R. 5.3, respectfully request that the Court (1) permit Defendants to withdraw Defendants' Status Report [Dkt. 37] ("Status Report") and (2) order that the Status Report be placed under seal. In support thereof, Defendants state:

1. On May 5, 2010, Defendants filed the Status Report, which contained as an exhibit the Award of Arbitration Panel in the dispute between NIBCO, Inc. ("NIBCO") and Wachovia Bank, N.A. ("the Award"). Defendants filed the Status Report and the Award in advance of a status conference conducted on May 7, 2010 for the purpose of advising the Court of the outcome of the arbitration and to bring about a resolution of this analogous action brought by NIBCO.

2. On May 7, 2010, the status conference was held. During the status conference, NIBCO, by counsel, agreed to dismiss its lawsuit against Defendants due, at least in part, to the outcome in the arbitration. The parties will be filing a Joint Stipulation of Dismissal shortly.

3. During the status conference, NIBCO's counsel expressed concern that the Award was included in a public filing because the Award is the confidential result of a private arbitration. To address NIBCO's concerns and because the case is being dismissed, Defendants agreed to withdraw the Status Report and request that the Court seal the document. Given that the case will soon be dismissed, there is no longer any need for the Award to be before the Court as a public document.

4. Defendants are mindful of the high standard generally required to seal documents. *See e.g., PepsiCo v. Redmond*, 46 F.3d 29, 31 (7th Cir. 1995) (citing cases and discussing the high standard to withhold documents from the public domain); *KnowledgeAZ, Inc. v. Jim Walter Resources, Inc.*, 2006 U.S. Dist. LEXIS 84080, *1 (S.D. Ind. June 28, 2006) (Baker, M.J.) ("Any request to seal any portion of the record will be closely scrutinized and must be rigorously justified."). However, in this case, where the filing to be sealed is the result of a private arbitration paid for by the parties to that arbitration, not a decision from a Court that used public resources, and where the parties agree to seal a document in conjunction with the dismissal of the case, good cause exists to seal the Status Report. Moreover, during the status conference held on May 7th, the parties discussed filing this motion and Magistrate Judge Baker indicated that the Status Report was one of the rare circumstances in which sealing the document was appropriate.

WHEREFORE, Defendants respectfully request that this Court permit them to withdraw the Status Report filed as Document 37 and order that the Status Report be placed under seal and handled in accordance with S.D.Ind.L.R. 5.3.

DATED: May 12, 2010

Respectfully submitted,

By: /s/ Jeffrey B. Bailey
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*American Funds Service Company & The Growth
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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2010, a copy of the foregoing document was served via the Court's electronic filing system on the following parties:

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